

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

v.

CR 04-PT-199-S

**MCWANE, INC., JAMES DELK, MICHAEL
DEVINE, and CHARLES "BARRY" ROBISON,**

Defendants.

MEMORANDUM

In reading *Arthur Andersen v. U. S.*, 2005 WL 1262-915 (U. S. Supreme Court 5-31-05), this court noted a reference to Title 18 U.S.C. §1512(e)(1) which notes that “an official proceeding need not be pending or about to be instituted at the time of the offense.” Title 18 U.S.C. §1505 does not contain any such provision. Although *Arthur Andersen* did not specifically reach the “proceeding” issue (see FN10), this reference to §1512(e)(1) is pertinent to Count 25 in this case, due to the absence of a similar provision in §1505.

This the 6th day of June, 2005.

A handwritten signature in blue ink, reading "Robert B. Propst", is written over a light orange rectangular background. The signature is cursive and fluid.

ROBERT B. PROPST
SENIOR UNITED STATES DISTRICT JUDGE